



DCI

OFFICE OF THE DEPUTY DIRECTOR

6 June 1977

NOTE FOR: General Counsel

SUBJECT : Rockefeller Commission Report

The DCI has completed his review of action taken and/or current status of the Rockefeller Commission recommendations. He has raised questions on two items concerning your office.

Please provide your response to this office by June 15, so that we can submit a coordinated reply to the DCI.

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Attachment:
As stated

EXECUTIVE REGISTRY FILE

EXECUTIVE REGISTRY FILE DCT

Recommendation (6)

The Department of Justice and the CIA should establish written guidelines for the handling of reports of criminal violations by employees of the Agency or relating to its affairs. These guidelines should require that the criminal investigation and the decision whether to prosecute be made by the Department of Justice, after consideration of Agency views regarding the impact of prosecution on the national security. The Agency should be permitted to conduct such investigations as it requires to determine whether its operations have been jeopardized. The Agency should scrupulously avoid exercise of the prosecutorial function.

Response

I fully endorse this recommendation. The procedure in effect since 1954, whereby the Agency determined whether there were security considerations which would prevent a successful prosecution, was abandoned in December of last year; the Commission recommendation reflects the de facto situation since then. It should be pointed out that the type of case envisioned under the former procedure was the occasional embezzlement of funds or falsification of vouchers, where to prosecute would involve the divulging of sensitive intelligence sources and methods. We appreciate that the guidelines for handling of reports of criminal violations should be most carefully developed jointly by the Agency and the Department of Justice to indicate clearly the extent to which the Agency should properly be authorized to conduct investigations in order to determine whether sufficient basis exists to submit reports to the Department of Justice. Clearly the final decision as to whether there should be a prosecution is solely the responsibility of the Department of Justice, after consideration of the Agency's views of the possible damage which would be done by revelation of intelligence sources and methods in such a prosecution.

The recommendation, as applicable to CIA, is reflected in []
"Restrictions on Intelligence Activities," subsection [] 19 April 1976,
which reads:

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"Information, allegations, or complaints of violations of the criminal provisions of the United States Code by CIA officers or employees, or relating to CIA affairs, shall be reported immediately by any employee to the Inspector General, who shall inform the General Counsel. Information, allegations, or complaints of violations of Title 18 of the United States Code involving Government officers and employees shall be expeditiously reported to the Attorney General by the General Counsel in compliance with 28 U.S.C. 535. Such report to the Attorney General shall include an evaluation prepared by the Inspector General of the impact, if any, of a prosecution on the national security or on foreign relations of the United States, including intelligence operations which may be jeopardized or intelligence sources and methods which may be compromised thereby. CIA will not exercise a prosecutorial function. Further, the Director shall report to the Attorney General that information which relates to detection or prevention of possible violations of the law by any person, including an employee of the...department or agency."

A footnote to this subsection explains:

"This provision requires that Agency heads report to the Attorney General any information they may obtain which relates to the commission of federal crimes. It is not intended to authorize any new collection activities but is intended to allow appropriate dissemination of incidentally collected information which relates to crimes."

Further, the Office of General Counsel and the Criminal Division of the Department of Justice have agreed upon the terms of a memorandum of understanding setting forth procedures implementing the provisions of [] This memorandum is expected to be signed by the Attorney General shortly and offered for the concurrence of the DCI.

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Let's expedite

Recommendation (10)

a. The Director should review the composition and operation of the Office of General Counsel and the degree to which this office is consulted to determine whether the Agency is receiving adequate legal assistance and representation in view of current requirements.

b. Consideration should be given to measures which would strengthen the office's professional capabilities and resources including, among other things, (1) occasionally departing from the existing practice of hiring lawyers from within the Agency to bring in seasoned lawyers from private practice as well as to hire law school graduates without prior CIA experience; (2) occasionally assigning Agency lawyers to serve a tour of duty elsewhere in the government to expand their experiences; (3) encouraging lawyers to participate in outside professional activities.

Response

I concur in this recommendation.

Significant changes in the composition of the Office of General Counsel and its relationship to all the activities of the Agency are already under way. The General Counsel is a regular participant in meetings of the Agency Management Committee and in my own management discussions with the Deputy Directors of the Agency. The General Counsel is in the process of reviewing all Agency regulations to assure that legal consultation is required in all sensitive situations and to assure that on policy decisions the General Counsel is consulted to ascertain if there are legal aspects to be considered. The Office of General Counsel has been removed from direct managerial functions undertaken in previous years and restricted to the function of independent legal advisor. The General Counsel is also taking steps toward having an outside review of his office for the purpose of developing recommendations on its size, composition, and method of operation. The Agency, within the last 18 months, has brought on board or has in process four lawyers from outside the Agency. I believe there should be a balance between bringing in lawyers from the outside and utilizing experienced officers from within the Agency who are professionally qualified as lawyers.

The General Counsel has, in the past, looked into the possibility of assigning lawyers to serve a tour of duty elsewhere in the Government to expand their experience. This was not found practicable, in part because of the reluctance of other agencies to take on an attorney for a limited period knowing that it would have to release him at about the time he was becoming productive. Nevertheless, the General Counsel and I consider this a desirable proposal, and we will again look into this possibility. We will also look into the possibility of placing Agency lawyers on sabbatical tours with private law firms.

I endorse the recommendation that Agency lawyers be encouraged to participate in outside professional activities. This has been the policy of the Office of General Counsel and will continue to be so.

Status (as of 12 May 1977)

The recommendations with respect to increasing the authority and responsibility of the Office of General Counsel were included in a Headquarters

STAT [redacted] and were implemented in [redacted] 1976, which specifies that the General Counsel shall, among other things:

- o "have access to any information in CIA necessary to perform his assigned duties;
- o report periodically, at least quarterly, to the Intelligence Oversight Board on his findings concerning questionable activities, if any;
- o report to the Intelligence Oversight Board any occasion on which he was directed not to report any activity to the Oversight Board by the DCI;
- o advise and assist all officials and employees on legal matters arising in connection with the official business of the Agency including review of all contracts on interest to the Agency; and
- o maintain a panel of private attorneys who are cleared for use in connection with all Agency activities and be responsible for selections and use of private attorneys in respect to Agency matters for whatever purpose." (This provision, along with Agency efforts to hire good outside lawyers, is broadly responsive to Recommendation 10b.)



Further, with respect to paragraph b of Recommendation 10, it should be noted that in the fall of 1975 the General Counsel had an outside review of the Office conducted by the Management Programs and Budget Staff, Office of Management and Finance, Department of Justice. In the two years since the Rockefeller report was published, the Office of General Counsel has been reorganized and strengthened in order to meet the increasing demands placed upon it. At the time of the Rockefeller report, there were 15 attorneys in the Office and no paralegals. At the present time, there are 33 attorneys and 3 paralegals and the Office has been organized into functional divisions offering greater specialization and expertise which contributes substantially to its ability to respond to present day needs of the Agency. The trend toward bringing in seasoned lawyers from private practice as well as new law school graduates has been continued. Of the 13 attorneys hired since 1 January 1976, 3 have come directly from private practice, 2 from positions as state or local prosecutors, and 5 directly from law school or judicial clerkships.

*Seems to me we could get Justice
to take a lawyer on either exchange
duty or loan
Want to encourage more outside
hiring - (just sent down an interesting
resume)*